

ORIGINAL



0000096510

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

Arizona Corporation Commission

DOCKETED

JUL 26 2001

2001 JUL 26 P 3:21

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY

IN THE MATTER OF INVESTIGATION  
INTO U S WEST COMMUNICATIONS,  
INC.'S COMPLIANCE WITH CERTAIN  
WHOLESALE PRICING REQUIREMENTS  
FOR UNBUNDLED NETWORK ELEMENTS  
AND RESALE DISCOUNTS.

Docket No. T-00000A-00-0194

NOTICE OF FILING

Cox Arizona Telcom, L.L.C. hereby files the attached Summary and Surrebuttal of  
Dr. Francis R. Collins.

Dated: July 26, 2001.

COX ARIZONA TELCOM. L.L.C.

By:

Michael W. Patten  
ROSHKA HEYMAN & DEWULF, PLC  
Two Arizona Center  
400 North 5th Street, Suite 1000  
Phoenix, Arizona 85004

ORIGINAL and 10 COPIES filed  
July 26, 2001, with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

ROSHKA HEYMAN & DEWULF, PLC  
TWO ARIZONA CENTER  
400 NORTH 5TH STREET - SUITE 1000  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**COPIES** hand-delivered July 26, 2001, to

Lyn A. Farmer, Esq.  
Chief Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Dwight Nodes, Esq.  
Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Maureen Scott, Esq.  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

**COPIES** mailed July 26, 2001, to:

Kathryn E. Ford  
QWEST CORPORATION  
1801 California Street, Suite 3800  
Denver, Colorado 80202

Timothy Berg, Esq.  
FENNEMORE CRAIG, P.C.  
3003 North Central, Suite 2600  
Phoenix, Arizona 85012-2913

Richard S. Wolters, Esq.  
AT&T COMMUNICATIONS, INC.  
1875 Lawrence Street, Room 1575  
Denver, Colorado 80202

Rex M. Knowles  
XO COMMUNICATIONS, INC.  
111 East Broadway, Suite 1000  
Salt Lake City, Utah 84111

**ROSHKA HEYMAN & DEWULF, PLC**

TWO ARIZONA CENTER  
400 NORTH 5TH STREET - SUITE 1000  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

- 1 K. Megan Doberneck, Esq.  
COVAD COMMUNICATIONS COMPANY
- 2 7901 Lowry Boulevard  
Denver, Colorado 82030
- 3
- 4 Michael Grant, Esq.  
Todd C. Wiley, Esq.  
GALLAGHER & KENNEDY
- 5 2575 East Camelback Road  
Phoenix, Arizona 85016-9225
- 6
- 7 Thomas H. Campbell, Esq.  
LEWIS & ROCA
- 8 40 North Central Avenue  
Phoenix, Arizona 85007
- 9
- 10 Thomas F. Dixon, Jr., Esq.  
MCI WORLD COM  
707 17th Street  
Denver, Colorado 80202
- 11
- 12 Eric S. Heath, Esq.  
SPRINT COMMUNICATIONS CO.  
100 Spear Street, Suite 930  
San Francisco, California 94105
- 13
- 14 Scott S. Wakefield, Esq.  
RUCO  
2828 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004
- 15
- 16 Jeffrey W. Crockett, Esq.  
Jeffrey B. Guldner, Esq.
- 17 SNELL & WILMER, L.L.P.  
One Arizona Center  
Phoenix, Arizona 85004-2202
- 18
- 19 Mary E. Steele, Esq.  
DAVIS WRIGHT TREMAINE, L.L.P.  
2600 Century Square  
1501 Fourth Avenue  
Seattle, Washington 98101-1688
- 20
- 21
- 22
- 23

- 1 Dennis D. Ahlers, Esq.  
ESCHELON TELECOM, INC.  
2 730 Second Avenue South, Suite 1200  
Minneapolis, Minnesota 55402
- 3 Marti Allbright, Esq.  
4 MPOWER COMMUNICATIONS CORP.  
5 5711 South Benton Circle  
Littleton, Colorado 80123
- 6 Gary Yaquinto, Esq.  
TIME WARNER TELECOM, INC.  
7 3003 North Central Avenue, Suite 1600  
Phoenix, Arizona 85012
- 8 Mr. Richard Sampson  
9 Z-TEL COMMUNICATIONS, INC.  
601 South Harbour Island Boulevard, Suite 220  
10 Tampa, Florida 33602
- 11 Michael B. Hazzard, Esq.  
KELLEY DRYE & WARREN  
12 1200 19<sup>th</sup> Street, N.W., 5<sup>th</sup> Floor  
Washington, D.C. 20036

13  
14   
15  
16  
17  
18  
19  
20  
21  
22  
23

1                                   **SUMMARY OF TESTIMONY AND**  
2                                   **SURREBUTTAL OF FRANK COLLINS**

3                                   **SUMMARY**

4           Initially, Cox is withdrawing the portion of my direct testimony that addressed  
5 specific input factors to the Qwest cost model and conducted a “recalculation” of loop  
6 rates using Qwest’s own investment model. That portion of the testimony focused on the  
7 initial position Qwest set forth in its March 15, 2001 filings in this docket and contrasted  
8 Cox’s analysis with that position. Since that time, Qwest has made numerous  
9 modifications to its loop price analyses, including to such things as its pricing zones.  
10 Although Cox does not agree with Qwest’s modifications, Cox does not intend to prepare  
11 a new analytical comparison with Qwest’s new position. Cox is withdrawing the direct  
12 testimony at page 18, line 1 through page 25, line 7, as well as Exhibits FRC-E-1 through  
13 FRC-I.

14           My remaining testimony points out that the Qwest’s proposals in this docket  
15 physically, economically, and technologically isolate tenants in business and residence  
16 multi-dwelling units (MDUs) to such a significant extent that those tenants will not be  
17 able to benefit from the competition in the provision of local exchange services intended  
18 by Congress with its passage of the Telecommunications Act of 1996 (the “1996 Act”).  
19 Qwest’s existing MTE/MDU configurations – which often require CLECs to obtain  
20 access to Qwest-owned campus wire or inside wire – create a blockade to the benefits of  
21 competition for MDUs, particularly given Qwest’s proposed subloop pricing.

22           I recommend that the Commission adopt the MDU gateway depicted in *Exhibit*  
23 *FRC-D* where both the Minimum Point of Entry and the point of Demarcation meet FCC  
24 requirements, are located at the property line of campus properties and located inside  
25 single building units at the closest possible point to an accessible outside wall as is  
26 feasible. I further urge the Commission to allow property owners to purchase the

1 telecommunication facilities on their property at net book value, just as the California  
2 Public Utilities Commission has done.

3 Qwest's pricing proposals also will put in motion a longer range strategy that  
4 could allow Qwest to maintain market dominance forever. This longer term strategy uses  
5 pricing artifacts – the “fill or utilization factor”, the “sizing factor”, and the “gradation of  
6 allowable cable sizes” – to recover total investment costs on essential technological  
7 elements necessary for competition while Qwest remains the super-dominant service  
8 provider. Specifically, this strategy provides Qwest with a zero dollar investment cost  
9 basis for outside plant facilities going forward by loading all of the investment cost on a  
10 small part of the total installed capacity that has caused that cost. Qwest then can enjoy  
11 the balance of the capacity (“goods on the shelf”) free of investment cost.

12 The notion of allowing Qwest to use its market dominance to recapture all of its  
13 outside plant investment over a significantly smaller number of units of capacity than  
14 have been installed (and which caused the investment costs), establishes barriers to  
15 market entry and threatens to force out new market entrants currently in business. I,  
16 therefore, urge the Commission to require Qwest to capture their investment costs over  
17 all but ten percent (10%) of the capacity installed that has caused that cost. The ten  
18 percent (10%) difference will provide a buffer for administrative and other costs of  
19 Qwest.

20 **SURREBUTTAL**

21 **Q. ARE YOU THE SAME DR. COLLINS WHO FILED DIRECT**  
22 **TESTIMONY IN THIS DOCKET?**

23 **A. Yes.**

24 **Q. HAS YOUR EMPLOYMENT OR QUALIFICATIONS CHANGED SINCE**  
25 **THAT FILING?**

26 **A. No, not in any substantial way.**

1 **Q. DR. COLLINS, ON WHOSE BEHALF HAVE YOU FILED YOUR**  
2 **SURREBUTTAL TESTIMONY?**

3 A. My surrebuttal testimony is presented on behalf of Cox Arizona Telcom, L.L.C.  
4 ("Cox"), which continues to be a facilities-based provider of local  
5 telecommunications services in Arizona.

6 **Q. DR. COLLINS, WHAT IS THE PURPOSE OF YOUR SURREBUTTAL**  
7 **TESTIMONY?**

8 A. The purpose of my surrebuttal testimony is to demonstrate that the Qwest rebuttal  
9 of my direct testimony fails to provide a compelling basis for the Commission to  
10 reject the recommendations in my direct testimony with respect to MDU/MTE  
11 issues and issues related to the development of per unit loop cost. In fact, most of  
12 the rebuttal testimony merely describes the problem, as I have set it out in my  
13 direct testimony, and does not address a viable solution. I have presented a viable  
14 solution in my direct testimony.

15 **Q. DR. COLLINS, WOULD YOU ADDRESS THE REBUTTAL TESTIMONY**  
16 **FILED BY QWEST WITNESS MR. OVERTON?**

17 A. Mr. Overton suggested that tenants access to competitive service providers could  
18 be provided by any one of four wiring architectural options made available by  
19 Qwest under Qwest's Cable Wire Service Termination Policy (CWSTP). The  
20 essence of Mr. Overton's rebuttal is a description of these four options and a claim  
21 that any of them provide access to competition. I note that all of the options are  
22 basically the same as those presented and discussed in my direct testimony and  
23 depicted in *Exhibits FRC-C-1 to FRC-C-4*.

24 The first option presented by Mr. Overton is depicted in my direct  
25 testimony *Exhibit FRC-C-1* with an added competitive disadvantage in that the  
26 MPOE has been moved away from the property line and located and combined

1 with the SNI (the combination identified by Mr. Overton as an MTE NID.) All of  
2 the competitive physical, technical, and economic disadvantages presented in my  
3 direct testimony apply to this option. Additionally, there is the added competitive  
4 disadvantage of Qwest's competitors having to place cable across private property  
5 to reach the MTE NID location if they choose, for economic reasons, not to obtain  
6 access to Qwest's facilities at the SAI.

7 The second option presented separates the NID (now called "demarcation  
8 point") from the MPOE and locates it on each floor of a multi-story building.  
9 Qwest maintains ownership of the cable (named riser cable) between the MPOE  
10 and the NID/demarcation point on each floor. This option is presented and  
11 discussed in my direct testimony and further depicted in *Exhibit FRC-C-3*. Once  
12 again this option presents the additional competitive disadvantage of Qwest  
13 moving the MPOE from the property line to the building so that other providers  
14 must place outside plant facilities across the private property to reach the MPOE.  
15 The anti-competitive aspects of this configuration presented in my direct  
16 testimony apply directly to CWSTP option 2. The added physical, technical, and  
17 economic competitive disadvantage of Qwest's moving the MPOE from the  
18 property line to the building also exists.

19 The third CWSTP option presented by Mr. Overton creates an even more  
20 severe competitive disadvantage for CLECs. In this option, Qwest has required its  
21 facility-based competitors to overlay the outside plant on private property, to  
22 overlay the riser cable in the building, and to overlay the horizontal cable on each  
23 floor which connects to the individual business or residence units. Qwest has  
24 accomplished this by locating the NID/demarcation point within each unit. This  
25 "option" has been presented and its anti-competitive nature discussed in my direct  
26 testimony and its architecture is depicted in *Exhibit FRC-C-4*. Again, this option



1 has the additional competitive disadvantage of Qwest moving the MPOE from the  
2 property line to the building.

3 Mr. Overton's discussion of CWSTP option 4 indicates that the MPOE is  
4 located at the property line making physical access easier. However, Qwest now  
5 requires a Field Connection Point (FCP) which raises the physical and economic  
6 barrier. Additionally, the cable between the MPOE and the tenant may need to be  
7 leased from Qwest.

8 **Q. DO ANY OF THE OPTIONS PROVIDED BY QWEST LEVEL THE**  
9 **COMPETITIVE PLAYING FIELD AND PROVIDE FACILE ACCESS TO**  
10 **THE BENEFITS OF COMPETITION TO TENANTS?**

11 A. No, none of them clearly provide the architecture depicted in *Exhibit FRC-D* of  
12 my direct testimony. That configuration guarantees competitive neutrality and  
13 facile access to competition by tenants.

14 **Q. DR. COLLINS, WOULD YOU DISCUSS THE REBUTTAL TESTIMONY**  
15 **OF QWEST WITNESS MR. BUCKLEY?**

16 A. Mr. Buckley apparently misunderstood my direct testimony regarding the sizing of  
17 cable used to provide telephone service. His description of the lack of congruence  
18 between "sizing factors" and "pair assignment factors" is accurate and recounts  
19 my discussion of that issue but misses the essential point made in my direct  
20 testimony and clouds the real issue to an even greater extent. That real issue is  
21 how the investment in cable is recovered!

22 Cox believes that the investment should be recovered over all of the plant  
23 units, in this case subscriber loops, that cause the cost. Qwest, based on its  
24 manner of computing cost per unit, believes that the cost should be recovered over  
25 only a fraction of those installed units – those in service or soon expected to be in  
26 service. What is the significance of that difference?

1 In the Cox position, each subscriber loop carries its own cost and that cost  
2 is recovered only when it is placed in service. Unused loops, "goods on the shelf"  
3 have unrecovered cost consequences that must be considered in doing plant  
4 design. This is what Cox and the other Qwest competitors face.

5 In the Qwest position all of the investment is recovered by active  
6 customers, those making up the "fill". I note that such investment, if made when  
7 Qwest has market control, assures Qwest of full cost recovery based on only part  
8 of the implemented plant. The remainder of the capacity – the difference between  
9 the "fill" (only a portion of the capacity of the plant) and the total capacity -- sits  
10 on the shelf absent investment cost. Qwest could literally give those loops away  
11 and still have full cost recovery.

12 The difference between the two positions is clear. The Qwest position  
13 allows them to obtain full investment recovery while they have market dominance  
14 and then "investment free" goods on the shelf to be used when (and if)  
15 competition increases. These investment cost free loops can be used to perpetuate  
16 Qwest's market dominance as, for example, in underpricing the market.

17 **Q. DR. COLLINS, QWEST WITNESS MR. FLEMING, IN HIS REBUTTAL**  
18 **TESTIMONY ON PAGES 101 TO 104, DISCUSSED THE PRICING**  
19 **TREATMENT OF WIRE ON PRIVATE PROPERTY. WHAT IS YOUR**  
20 **OPINION OF THAT TESTIMONY?**

21 **A.** Mr. Fleming opined on several points. The first is that Campus Wire should be  
22 priced at the same level as distribution cable. This opinion is merely a restatement  
23 of Qwest's current attempt to drag cable on private property into its network.  
24 Premise cable, including campus wire, has historically been treated differently  
25 than distribution cable because its nature is entirely different. A telling point in  
26 support of that position is that Qwest has historically required the property owner  
27 to pay for the premise wire infrastructure (conduit placement and the like) in

1 which the cable is placed. There are no second party payments for infrastructure  
2 to support the placement of distribution cable. The cable on private property is  
3 intended only to serve customers at that property. Distribution cable is designed to  
4 be used and reused as the customer location pattern within the distribution area  
5 changes.

6 Mr. Fleming also cited the fact that no cost models presented in the Docket  
7 included the design of a campus arrangement that was different than the  
8 distribution configuration in support of his position. In fact, the models were  
9 designed to represent distribution plant and not cable on private property. The  
10 models were forced fit into a representation of campus wire (or building wire) by  
11 simply and erroneously extending them onto the private property. They did not  
12 model for campus wire because they were not intended to be used for campus  
13 wire.

14 Mr. Fleming opined that competition would "be impaired in non-MTE  
15 distribution areas if MTE's are removed from the calculation of the average  
16 subloop distribution costs and priced separately. "He continues with the claim that  
17 "There is no doubt that the cost of serving MTEs whether they consist of a single  
18 large building or numerous smaller building[s] on a single contiguous piece of  
19 property is relatively low when compared to the costs of serving many other types  
20 of distribution areas." Cox agrees that the costs are lower and especially so when  
21 the property owner is charged for the bulk of the installation as is necessarily so  
22 when the property owner pays for the infrastructure. However, the claimed sub-  
23 loop price for the "last 300 feet," such as the campus wire, conflicts with the lower  
24 cost notion.

25 As indicated in my direct testimony Cox does not agree that competition  
26 will be impaired, and demonstrates how the opposite is true. Mr. Fleming offered  
27 no explanation of how competition would be impaired.

1           Finally, Mr. Fleming summarily suggested (p. 103, lines 18-22) that  
2 removing the lower cost of serving MTEs from the average loop cost computation  
3 would require a revision of costs for other distribution areas. However, he gave no  
4 indication of the relative impact nor did he indicate whether this result was good  
5 or bad. The fact is that Cox's recommendations to the Commission would fully  
6 compensates Qwest for the remainder of its investment in those facilities (such as  
7 campus wire) and consequently makes Qwest financially whole with respect to  
8 them. There is no point in claiming that removal of fully compensated plant from  
9 an unrelated computation has an effect on that computation. If averages are  
10 meaningful, than the distribution cable costs should be averaged and the cable on  
11 private property costs should be separately averaged. They should not be lumped  
12 together in an apples and oranges mixture.

13           Mr. Flemings rebuttal testimony provides only unfounded opinion, not  
14 evidence, regarding Cox's position in this docket and the Commission should not  
15 give his rebuttal testimony any weight in its decision.

16 **Q. IN VIEW OF THE FACT THAT YOU HAVE WITHDRAWN THAT PART**  
17 **OF YOUR DIRECT TESTIMONY THAT DEALS WITH COSTS, DO YOU**  
18 **HAVE ANY COMMENTS ABOUT THOSE ISSUES THAT WILL BE**  
19 **HELPFUL TO THE COMMISSION?**

20 **A.** Yes, I have a few comments that I believe will be helpful and they involve process  
21 and policy issues as they effect the market in Arizona for telecommunication  
22 services.

23           With respect to process, the changes in position filed by Qwest and Staff  
24 have resulted in a moving target. It is not unusual for the Parties to attempt to  
25 negotiate a settlement of issues that may result in cost numbers different from  
26 those calculated by various models. But those compromises are usually done off  
27 line. While the negotiations are underway, the Docket proceeds based upon the

1 information that was filed and which represents the thoughtful position of the  
2 Parties. This gives the Docket a structure that the Commission can look to.

3 In this instance, major changes in cost structure and zone configuration  
4 have materialized, each new version contradicting and denying the legitimacy of  
5 the earlier one, and being filed as the new formal position of the Parties, not a  
6 negotiation position. Cox found the process unusual and believes that it does not  
7 result in a record upon which the Commission can base a rational decision. This is  
8 the major reason Cox withdrew its cost testimony.

9 Cox is a facility-based provider that has significant investments in  
10 telecommunications infrastructure in Arizona. These investments were made  
11 against a business model that depended on a fair and equitable development of the  
12 competitive market for services. At this juncture, Cox has some policy concerns.

13 If UNE rates, particularly loops, are divorced from cost and set too low, it  
14 changes the market from one which encourages facilities investment to one which  
15 encourages arbitrage. History has shown that competition which arises only  
16 because of an artificial gap between retail cost and wholesale rates -- thus allowing  
17 an arbitrage business to develop -- is not long lasting. In the meantime, the  
18 arbitrageurs destroy the market for companies that have invested in infrastructure,  
19 such as Cox. The inevitable result is a failure of competition.

20 On the other hand, if UNE rates are set too high -- that is significantly  
21 above cost -- it raises the barrier to market entry for companies that may  
22 eventually become facilities based and invest in Arizona's infrastructure.

23 Rates should be set at a level that does not invite arbitrage as a way of  
24 doing business and at the same time shows that increased margins between UNE  
25 cost and retail prices can be obtained by infrastructure investment. To obtain this  
26 increased margins, companies should move from the use of UNEs to facilities  
27 investment. These undefined "optimum" rates are what the Commission should

1 attempt to establish. Because of the reasons cited above, Cox does not know how  
2 the current record provides a basis upon which to determine what those rates  
3 should be.

4 **Q. IN LIGHT OF THIS REBUTTAL TESTIMONY, WHAT IS YOUR**  
5 **RECOMMENDATION TO THE COMMISSION?**

6 A I believe that the Commission will best serve the telephone service consumers in  
7 Arizona by following the recommendations made in my direct testimony as to  
8 MDU/MTE access and computing subscriber loop investment assignments.